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NOTES

QUALITY LUMBER & MILLWORK CO. v. ANDRUS: A PERSONAL REPRESENTATIVE'S POWER OF SALE OVER REALTY

The vast power acquired by a personal representative over a decedent's real estate is well illustrated by the Pennsylvania Supreme Court decision in *Quality Lumber & Millwork Co. v. Andrus*.¹ The court held that a conveyance of realty by a decedent's personal representative divested a lien created by a prior mortgage on the land; even though the mortgage was executed by the decedent's sole heir and recorded within one year of the decedent's death.

This decision merits consideration since it is the first supreme court interpretation of those sections of the 1949 Fiduciaries Act dealing with the sale of realty.² This Note will analyze the rationale of prior law with respect to a personal representative's power over realty and observe the ramifications which may follow from the practical application of the *Quality* decision in the subsequent administration of decedents' estates.

In April, 1956, Marie Sedlemeyer died intestate, owning one piece of unencumbered real estate. Her sole heir, Marie Andrus, was granted letters of administration after filing a bond with corporate security.³ Thereafter, within one year of the decedent's death, Mrs. Andrus, in the capacity of decedent's heir and joined by her husband, executed a mortgage on the land in favor of Quality Lumber and Millwork Company. The mortgage was promptly recorded. Three years later, Mrs. Andrus, acting now as administratrix of the estate, conveyed the realty to Frank and Amelia Zupancic, after being excused from entering additional security.⁴ Since the mortgage was in default, Quality brought execution proceedings against the realty but the Zupancics requested a stay of execution. The common pleas court denied this request, reasoning that a personal representative had no power to administer real estate occupied by an heir unless such administration was necessary

1. 414 Pa. 411, 200 A.2d 754 (1964).

2. PA. STAT. ANN. tit. 20, §§ 320.104, 320.541, 320.547, 320.615 (1950).

3. PA. STAT. ANN. tit. 20, § 320.321 (1950). Any individual seeking letters of administration of any nature must execute and file a bond with the register.

4. Under PA. STAT. ANN. tit. 20, § 320.541 (1950), a personal representative who has been required to give bond is not permitted to receive the proceeds of a sale of realty until the court has excused him from entering additional security.

"to protect the rights of claimants or other parties."⁵ The superior court reversed, holding that the subsequent sale by the administratrix divested the prior mortgage lien.⁶ The supreme court affirmed.⁷

The difference in a personal representative's authority with respect to realty, as distinguished from personalty, evolved from the unique treatment given to land in the early development of the law.⁸ The English system emphasized the devolution of land intact and separate laws were developed for the distribution of realty.⁹ This was necessary since the very strength of the feudal system was based on the complex personal relationships and services incident to the holding of land.¹⁰ The heir represented the deceased with respect to all the rights and liabilities that passed with the land,¹¹ the land descending directly to the heir via primogeniture. Personalty, however, vested in the decedent's personal representative.¹² Statutes were enacted providing for the appointment of fiduciaries to administer the decedent's personal property.¹³ However, land in England remained free of the control of decedent's personal representative until the passage of the English Administration of Estates Act¹⁴ in 1925.

Pennsylvania abandoned the dual English system of administering realty and personalty separately by attempting to assimilate the rules regarding the two species of property in early statutes. By the Act of May 31, 1688,¹⁵ land of a decedent was an asset of his estate and subject to sale to pay his debts. Although land still descended directly to a decedent's heir, the latter's interest was defeasible in behalf of decedent's creditors. Until the passage of

5. 13 Fiduc. Rep. 292, 300 (Pa. Orphans' Ct. 1962).

6. 201 Pa. Super 189, 191 A.2d 685 (1963).

7. 414 Pa. 411, 200 A.2d 754 (1964).

8. Under roman law, the unit of society was the family. The entire family owned the realty and if one member died, the rights of the others remained unchanged. Each heir was termed "sui heredes"—heirs of themselves rather than of the decedent. The roman heir soon became identified with his ancestor and was the universal successor to all of the "persona"—the aggregate of rights and duties. Flear, *Real Estate—Administration in a Decedent's Estate*, FIDUC. REV. 1 (June 1948).

9. See HOLLAND, JURISPRUDENCE 160 (11th ed. 1910).

10. See REEVES, REAL PROPERTY 341 (1909).

11. Flear, *op. cit. supra* note 8, at 4.

12. HOLLAND, *op. cit. supra* note 9.

13. By Statute of Westminster 2, 13 Edw. 1, c. 19, the ordinary (prelate of the church) was bound to pay all debts of a person dying intestate. This is the origin of administrators as they exist in England today. See generally *Horner & Roberts v. Hasbrouck*, 41 Pa. 169 (1862).

14. 15 Geo. 5, c. 23 (1925). The act provides that realty as well as personalty shall pass to the personal representatives.

15. Pa. Laws 1688, § 79, at 217. The act provides:

That any person who died or shall die intestate, being owner of lands within the province or territories, and hath left or shall leave legal issue, it shall be lawful for the court of Orphans' with the approbation of the Governor and Council, to empower the widow or administrator in case of considerable debts . . . to make sale of such part or tracts of the said land. . . .

the Fiduciaries Act of 1949, which made significant changes in the law respecting the administration of realty, the powers of a personal representative over the decedent's realty remained practically unchanged. Realty could only be sold when the personal estate was insufficient to satisfy the decedent's debts.¹⁶ Even then such a sale could not be completed until approved by the orphans' court.¹⁷

In rendering the *Quality* decision the Pennsylvania Supreme Court had to construe those sections of the Fiduciaries Act of 1949 relevant to the authority that a personal representative may assert over realty.¹⁸ Section 104, provides that "legal title to all real estate of a decedent passes upon his death to his heirs or devisees subject to all the powers granted to the personal representative by this act. . . ."¹⁹ Prior to *Quality* judicial construction of this section limited action by a personal representative to those situations where the exercise of his power was necessary for the proper administration of the estate. In *Diloretto v. Marsidal*,²⁰ the court held, a lease granted by a sole devisee more than one year after the decedent's death and when no letters testamentary were in existence, was not divested by a subsequent sale completed by an executor of the estate. In an attempt to delineate the personal representative's powers that a devisee's title is subject to under section 104 to the act, the court said:

The limitations on the passage of title to a devisee as established by Section 104 of the Fiduciaries Act confer rights upon a decedent's personal representative only where it is necessary for the said representative to exercise such rights in the administration of the estate.²¹

An even more definitive approach was taken in *Anderson's Estate*²² where the court by way of dicta said that the "heir takes the whole title as descends under the intestate laws subject to the payment of debts and charges. . . ."²³

The above restrictive constructions ignore the clear wording of the statute. Section 104 does not limit the administrator's control of the property to situations where there are debts or charges. However, these limitations did exist under the Fiduciaries Act of 1917,²⁴ but are conspicuously absent

16. *In re Huff's Estate*, 300 Pa. 641, 150 Atl. 98 (1930). However, if a decedent died testate a power of sale over the decedent's realty could be conferred by a specific testamentary provision.

17. Pa. Laws 1917, § 16(b) at 479.

18. See statutes cited in note 2 *supra*.

19. PA. STAT. ANN. tit. 20, § 320.104 (1950).

20. 46 Erie Co. L.J. 128 (Pa. Orphans' Ct. 1962).

21. *Id.* at 134.

22. 1 Fiduc. Rep. 449 (Pa. Orphans' Ct. 1951).

23. *Id.* at 454.

24. Pa. Laws 1917, § 16(a) at 479.

in the 1949 act. To determine the extent of the personal representative's powers under the 1949 act, attention must be focused on several other sections of the act.

Section 541 defines the power of sale that an administrator has over realty not specifically devised.

[T]he personal representative may sell, at public or private sale, any personal property whether specifically bequeathed or not, and any real property not specifically devised.²⁵

Quality, citing *Brown v. Bailey*,²⁶ argued that this was a limited power of sale, usable only when necessary for the administration of the estate.²⁷ However, *Brown* is factually distinguishable from *Quality*. In *Brown* an action of ejectment was brought by the decedent's personal representative against the defendant-vendee who had purchased the real estate from the decedent's sole devisee within six months of the decedent's death. The court, in denying the action in ejectment, held that possession of the land was not necessary for the purposes of administration and distribution. It should be noted, however, that a right to possession and a power of sale are clearly distinguishable powers and are treated separately under the act. Section 501 of the act states that in order to take possession of land occupied by an heir or devisee, the personal representative must obtain a court order showing that such possession is necessary "to protect the rights of claimants or other parties."²⁸ In *Brown* the personal representative had not, as required by the act, applied to the orphans' court for an order to take possession; furthermore, he stipulated that possession was not necessary to protect the rights of any parties interested in the estate.²⁹ The act clearly prohibited such possession. The court did not discuss the possibility that the personal representative might sell the land occupied by the devisee or his grantee. Under section 541 it seems clear such sale would have been prohibited.³⁰

Other statutory restrictions imposed on a personal representative's power of sale are: (1) A personal representative who has been required to give bond must either be excused from entering additional security or enter such security as is required before receiving the proceeds of the sale;³¹ (2) there

25. PA. STAT. ANN. tit. 20, § 320.541 (Supp. 1964).

26. 84 Pa. D. & C. 269 (Orphans' Ct. 1952).

27. Brief for Appellant, pp. 10-11, *Quality Lumber & Millwork Co. v. Andrus*, 414 Pa. 411, 200 A.2d 754 (1964).

28. PA. STAT. ANN. tit. 20, § 320.501 (1950).

29. 84 Pa. D. & C. at 276.

30. PA. STAT. ANN. tit. 20, § 320.541 (1950) provides: ". . . the personal representative may sell . . . any real property not specifically devised."

31. PA. STAT. ANN. tit. 20, § 320.541 (1950). However, a resident corporate personal representative and a resident executor are excused from the requirement of filing bond on the theory that they are solvent and subject to the jurisdiction of the Pennsylvania courts. PA. STAT. ANN. tit. 20, § 320.323 (1950).

must be no prohibiting provision in the testator's will;³² (3) the court may in certain instances restrain a sale;³³ and (4) the personal representative must get court approval before purchasing any of decedent's realty.³⁴

Why such a broad power of sale was vested in a personal representative can best be explained by an examination of the law prior to 1949. Under the Fiduciaries Act of 1917, the personal representative had an unlimited power of sale over a decedent's personalty.³⁵ In the span of time between the 1917 act and the 1949 act, the value of personalty in most decedent's estates rose sharply, greatly exceeding the value of realty.³⁶ The draftsmen of the 1949 act believed no distinction should be made between the two types of property because of this fact.³⁷ Furthermore, the difference in treatment arose from the feudal dislike of partitioning land. Having outlived the reason for its existence, it was no longer necessary.³⁸

After deciding that Mrs. Andrus, as administratrix, had the power to sell the realty, the court had to determine the effect of the sale on a recorded mortgage lien. Prior to the act of 1949, a mortgage lien on the decedent's land could not be divested by a court approved administrative sale unless the holder of the mortgage consented to the sale by a writing filed with the court.³⁹ Thus, in *Jones Estate*,⁴⁰ the Pennsylvania Supreme Court restated, as existing law, the proposition that the orphans' court could decree a sale of real estate freed from the lien of a mortgage or mortgages, if and only if, the holder thereof consented.⁴¹

The necessity of obtaining consent of the mortgage holder was abolished by the act of 1949. Section 547 prescribes that when a personal representative exercises the power of sale under section 541 of the act, he passes the full title of the decedent, freed "from *all claims* of distributees and of persons

32. PA. STAT. ANN. tit. 20, § 320.541 (1950). See Schmidt, *Report of Proceedings of Pennsylvania Bar Association Institute on Fiduciaries Act of 1949*, 21 PA. B.A.Q. 1, 19 (1950).

33. PA. STAT. ANN. tit. 20, § 320.545 (1950). See, e.g., *In re Elliotts Estate*, 66 York 173 (Pa. Orphans' Ct. 1953).

34. PA. STAT. ANN. tit. 20, § 320.546 (1950). See, e.g., *In re Gabell's Estate*, 87 Pa. D. & C. 53 (Orphans' Ct. 1954).

35. Schmidt, *op. cit. supra* note 32, at 18. *Contra*, *In re Minichello's Estate*, 368 Pa. 640, 84 A.2d 511 (1951).

36. Eckert, *The Pennsylvania Fiduciaries Act of 1949*, 11 U. PITT. L. REV. 194, 195 (1950).

37. As was said by a draftsman of the act: "If the personal representative may sell personalty of any kind or value without an order of court, as has long been true, why cannot he be trusted to sell realty of lesser value without first getting an order of court." *Ibid*.

38. Fleer, *op. cit. supra* note 8, at 2.

39. Pa. Laws 1917, § 16(o) at 486.

40. 275 Pa. 143, 118 Atl. 647 (1922).

41. *Id.* at 145, 118 Atl. 648.

claiming in their right. . . ."⁴² There is no exception for a lien created by a mortgage.

Since legal title to realty passes directly to the heirs at decedent's death,⁴³ the use of the word "distributees," in the sense of one to whom distribution has been made categorizes the position of Mrs. Andrus, who is decedent's sole heir in *Quality*.⁴⁴

Although the word "distributee" is very often used to describe those persons among whom the personal estate of an intestate is distributed,⁴⁵ it can equally apply to the disposition of realty. In *Polanco's Estate*,⁴⁶ a personal representative was enjoined from selling the decedent's real estate because a "distributee had requested the right to take the real estate in kind as part of her distributive share. . . ."⁴⁷ It is significant to note that the distributee was one of the decedent's heirs. As sole heir, Mrs. Andrus also occupied the position of a "distributee" in *Quality* when she mortgaged the property.⁴⁸ Thus, *Quality's* claim was derivative in that it stood in the position of claiming in the right of Mrs. Andrus, a distributee, and section 547 expressly discharges such a claim.

The decision may seem inequitable, since the personal representative failed to use the provisions of the act to administer the estate; yet, he was able to defeat a valid and bona fide lien by merely having recourse to its provisions. Nevertheless, the result can be justified by an analysis of the purposes producing the incorporation of section 547 into the act.

PURPOSE AND POLICY OF THE 1949 FIDUCIARIES ACT

A draftsman of the act stated that, "the committee thought that the title of a purchaser from a personal representative must be made secure."⁴⁹ Prior to the act, such a purchaser had several burdens to overcome before

42. PA. STAT. ANN. tit. 20, § 320.547 (1950). It provides:

If the personal representative has given such bond, if any, as shall be required in accordance with this act, any sale . . . by [the personal representative] . . . whether pursuant to a decree or the exercise . . . of a power under this act, shall pass the full title of the decedent . . . [in the realty], unless otherwise specified, discharged from the lien of legacies, from liability for all debts and obligations of the decedent, from all liabilities incident to the administration of the decedent's estate, and from all claims of distributees and of persons claiming in their right . . ." (Emphasis added.)

43. See PA. STAT. ANN. tit. 20, § 320.104 (1950).

44. 414 Pa. at 417, 200 A.2d at 757.

45. See, e.g., *Jackson v. Osborne*, 108 W. Va. 480, 151 S.E. 709 (1930); *In re Gatch's Estate*, 52 Ohio L. Abs. 566, 83 N.E.2d 526 (1948); *Henry v. Henry*, 31 N. C. 278 (1849).

46. 80 Pa. D. & C. 436 (Orphans' Ct. 1953).

47. *Id.* at 439.

48. For a case construing the word "distributee" to be synonymous with heir, see *Kitchen v. Southern Ry.*, 68 S.C. 544, 48 S.E. 4 (1904).

49. *Eckert, op. cit. supra* note 36, at 199.

he received full title to the decedent's land. First, he had to obtain all the signatures of the decedent's lawful heirs. Naturally, problems arose in ascertaining the identification and location of such heirs.⁵⁰ Second, joinder by the heirs' spouses was necessary, and frequently the consummation of a sale was held up by a spiteful spouse.⁵¹ Section 547 facilitates the disposition of a decedent's realty by placing full title solely in the personal representative. Therefore, joinder of heirs is no longer necessary. As a result, the marketability of the decedent's land is substantially increased.

Under the act of 1917 all debts of the decedent were liens on his real property for a period of one year from death and remained liens for a five year period if the creditor indexed his claim within the initial year.⁵² Section 547 frees the decedent's realty of all obligations of creditors except those who had liens of record at the time of the decedent's death.⁵³

Besides affording an adequate means of disposing of a decedent's realty, section 547 illustrates the legislature's intent to uphold the integrity of contracts made by a decedent's personal representative. In light of the trend of past judicial pronouncements regarding such contracts, remedial legislation was a necessity.

In *Orr's Estate*,⁵⁴ in 1925, the Pennsylvania Supreme Court upheld the repudiation of a contract for the sale of land by a personal representative on receipt of a higher offer made by a third party. The effect of this decision was to make personal representatives' contracts risky and uncertain. Subsequent decisions indicated that a purchaser from a personal representative would be given little protection. In *Kargrally v. Provident Trust Co.*,⁵⁵ the supreme court held that such a purchaser had no cause of action against the personal representative if the latter acted in good faith. In a subsequent decision the purchaser was denied a cause of action against the estate for loss of his contract.⁵⁶

The detrimental effect of the doctrine promulgated in *Orr's Estate* was recognized in *In re Cent. Trust & Sav. Co.*⁵⁷ There, the court refused to allow the Secretary of Banking to repudiate a contract made for the sale of real estate on receipt of a later higher offer.⁵⁸

50. Schmidt, *op. cit. supra* note 32, at 7.

51. *Ibid.*

52. Pa. Laws 1917, § 15(b) at 476.

53. Liens of record at the time of the decedent's death can be divested only by a judicial sale under the supervision of the orphans' court of the county where letters testamentary or of administration were granted. PA. STAT. ANN. tit. 20, § 320.543 (1950).

54. 283 Pa. 476, 129 Atl. 565 (1925).

55. 338 Pa. 358, 12 A.2d 11 (1940).

56. Powers' Estate, 153 Pa. Super. 161, 33 A.2d 501 (1943).

57. 41 Pa. D. & C. 304 (Orphans' Ct. 1941).

58. The court said:

If . . . the sale could, as a matter of course, be upset by the mere receipt of a

The doctrine of *Orr's Estate* was repudiated by the legislature in 1945.⁵⁹ Section 547 of the Fiduciaries Act of 1949, by providing that a personal representative shall pass "full title of the decedent," reaffirms the legislative intent to uphold the efficacy of contracts of sale made by a decedent's personal representative.

The dissent in *Quality* reasoned that section 501 of the act prohibited a personal representative from exercising any power of administration over realty occupied by an heir, unless such exercise was "required for the proper administration of the estate."⁶⁰ To impose such a restriction on the personal representative's authority would do violence to both the letter and the spirit of the act.

Section 501 provides:

A personal representative shall have the right to and shall take possession of, maintain and administer all the real and personal estate of the decedent, except real estate occupied by an heir or devisee. . . . [T]he court may direct the personal representative to take possession of, administer and maintain real estate occupied by an heir or devisee if this is necessary to protect the rights of claimants or other parties. Nothing in this section shall affect the personal representatives' power to sell real estate occupied by an heir or devisee.⁶¹

A restriction that each sale made by a personal representative be necessary for the administration of the estate would cast a cloud on the title of every purchaser.⁶² The insecurity of fiduciaries' contracts produced by the doctrine promulgated in *Orr's Estate* would be revived, and effective liquidation of decedent's estates would be substantially hindered.

It should be further noted that section 501 expressly excludes from its provisions the personal representative's power of sale. It was thought desirable to attach as much finality to a deed from a fiduciary to a bona fide purchaser as was practical. Because of such intentions, the orphans' court was *not* granted an express power under the act to rescind an improvident consummated sale.⁶³

higher offer, sales of real estate by the Secretary of Banking would become farcical and rational men would shun them and refuse to bid. The result would be that liquidation would be greatly retarded and the total cost thereof would greatly increase, so that any temporary benefit to be had from the acceptance of the increased offer would be outweighed by the resulting decrease in eventual total returns. . . .

Id. at 307.

59. PA. STAT. ANN. tit. 20, § 818 (1950), which provides:

When a fiduciary shall hereafter make a contract not requiring approval of court . . . neither inadequacy of consideration, nor the receipt of an offer to deal on other terms shall . . . relieve the fiduciary of the obligation to perform his contract. . . .

60. 414 Pa. at 427, 200 A.2d at 762.

61. PA. STAT. ANN. tit. 20, § 320.501 (1950).

62. 414 at 419, 200 A.2d at 758.

63. Eckert, *op. cit. supra* note 36, at 198.

Justice Roberts in his dissent was concerned that the overall effect of the decision might be to encourage dishonest sales by fiduciaries.⁶⁴ Such possibilities were considered by the draftsmen of the act and sanctions to prohibit such an abuse of fiduciary power were incorporated into the act. Under section 545 any party having an interest in the disposition of the estate may petition the court to restrain the personal representative from selling the decedent's realty.⁶⁵ Such a petition has been granted where a sale was not necessary either for the payment of debts or for distribution of the estate.⁶⁶ Furthermore, a fiduciary cannot receive the proceeds of a sale until the orphans' court has relieved him from entering additional security or, if additional security is required until such security is entered.⁶⁷ Finally, the orphans' court still retains its equitable jurisdiction and may rescind a sale on the grounds of fraud or material mistake.⁶⁸

Perhaps the effect of the *Quality* decision will be most strongly realized in those estates which do not require a formal administration. In these estates a party accepting a conveyance from, or as in *Quality*, granting credit to an heir or devisee, assumes the risk of later acts by a personal representative. However, section 615 of the act secures a purchaser's title from an heir, if no letters of administration are granted at the expiration of one year from the decedent's death.⁶⁹ Thus, the property of a decedent in those estates not formally administered is not freely alienable until the expiration of one year from the decedent's death. In this regard the Fiduciaries Act of 1949 did not alter the act of 1917. Under the latter, realty of the decedent was inalienable during the first year because all debts of the decedent were liens on his real estate for one year.⁷⁰ Under the act of 1949, according to section 615, debts are not liens on the property, but a conveyance by an heir or devisee can be defeated by a subsequent sale made by a personal representative appointed within the first year.⁷¹

The burden is cast on the purchaser during the first year to protect himself. Before accepting a deed from an heir he should determine if a personal representative has been appointed. Section 301 provides that letters testamentary or of administration must be granted in the county where the decedent had his last principal residence.⁷² If no letters are in existence,

64. 414 Pa. at 425, 200 A.2d at 761.

65. PA. STAT. ANN. tit. 20, § 320.545 (1950).

66. Polanco's Estate, 80 Pa. D. & C. 436 (Orphans' Ct. 1953).

67. PA. STAT. ANN. tit. 20, § 320.541 (1950).

68. Eckert, *op. cit. supra* note 36, at 199.

69. PA. STAT. ANN. tit. 20, § 320.615 (1950).

70. Pa. Laws 1917, § 15(b) at 476.

71. PA. STAT. ANN. tit. 20, § 320.305 (1950), provides a means whereby a creditor of the decedent may take out letters of administration in order to ensure the satisfaction of his debt.

72. PA. STAT. ANN. tit. 20, § 320.301 (1950).

before accepting the deed, he should require the purchase money be held in escrow⁷³ or a surety bond be given by the heir, pending the expiration of the year from the decedent's death.⁷⁴ It should be noted also that section 615 only frees the land from the claims of creditors; it does not cut off the rights of those who subsequently might claim to be heirs or devisees. Therefore, a purchaser should be certain that he has obtained in his deed signatures from all of the decedent's lawful heirs and their respective spouses.

Generally, Pennsylvania takes a much less restrictive view than other jurisdictions with respect to sales by a personal representative. In many states, a decedent's personal representative has no power to sell the decedent's real estate without first obtaining court approval.⁷⁵ A sale without a court order is ineffectual and no title passes to the purchaser.⁷⁶ California requires the personal representative to prove to the court that the sale of the estate realty is necessary in order to satisfy obligations of the decedent or that the sale is for the best interests of the estate.⁷⁷ Thus, a California appellate court recently reversed the confirmation of sale by a lower court, stating that "where the only possible reason for the sale is to pay the expense of the administration, and where that necessity had been removed . . . then any reason for the sale has been completely removed, and hence it was error to confirm the sale."⁷⁸ The advisability of such a result is questionable. Land sales might be impeded for years while the courts determined "if such sales were necessary." The ghost of *Orr's Estate* would be resuscitated.

Still other jurisdictions have restricted the personal representative's power of sale to those instances where necessary for the payment of the decedent's debts.⁷⁹ Yet, the same jurisdictions provide an unqualified power of sale over personalty. The distinction preserved seems to be based more on the blind perpetration of a historical anachronism than on sound reasoning.⁸⁰

The decision in *Quality* illustrates the broad discretionary power of sale vested in the personal representative under the act of 1949. It also points out the possibility that a dishonest administrator may prejudice an heir's

73. Eckert, *op. cit. supra* note 36, at 200.

74. *Ibid.*

75. See Shearn v. Fenton, 74 S.D. 355, 52 N.W.2d 830 (1952); Fastenau v. Engel, 125 Colo. 119, 270 P.2d 1019 (1954); Shawnee Nat. Bank v. Marler, 106 Okl. 71, 233 Pac. 207 (1924).

76. See State *ex rel.* King v. District Court, 42 Mont. 182, 111 Pac. 717 (1910); Shearn v. Fenton, 74 S.D. 355, 52 N.W.2d 830 (1952).

77. *In re* Weaver's Estate, 158 Cal. App.2d 367, 322 P.2d 522 (1958).

78. *Id.* at 400, 322 P.2d at 525.

79. See Youngblood v. Logan, 92 Ga. App. 107, 86 S.E.2d 173 (1955); Linkler v. Linkler, 213 N.C. 351, 196 S.E. 329 (1938); Debow v. Wollenberg, 52 Ore. 404, 97 Pac. 717 (1908); Burroughs v. Raymond, 65 Ohio L. Abs. 108, 112 N.E.2d 82 (1951).

80. Fleer, *Real Estate—Administration in a Decedent's Estate*, FIDUC. REV. 1 (June 1948).

interest in an estate by effecting an unnecessary sale.⁸¹ The sanction created to curtail such a sale under section 545 presumes prior notice of the pendency of the sale on the part of the heir. The mere fact that administrative sales usually take from sixty to ninety days⁸² in no way insures that the heir will be appraised of the transaction in time to take action. Such a presumption of notice borders on the unrealistic. It is therefore suggested that the legislature reconsider the wording of section 541 and follow the trend developed in other jurisdictions, requiring some form of notice to the heirs before a sale can be effectuated.⁸³ Perhaps the procedure that existed under the Fiduciaries Act of 1917 for the consummation of public sales of realty could be utilized.⁸⁴

It should not be inferred that the suggestion offered should be so worded as to make an administrative sale void if the owner of the estate fails to receive actual notice. Such a requirement would place an impractical burden on the decedent's personal representative. Rather, in order to supplement the restraining effect of section 545, it is suggested that some means be provided whereby an heir, devisee, or any other party who has a genuine interest in the disposition of the decedent's estate, may more readily acquire the protections afforded by the restraining provisions of section 545.

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81. This problem did not arise in the instant case because the sole heir and the administratrix were the same person.

82. When questioned about the possibility of a sale by a personal representative occurring before an heir of the decedent had sufficient notice, Commissioner Schmidt replied: ". . . [I]t takes time to sell real estate, usually 60 to 90 days, ample time for the heirs to discover that the said property is being sold." Schmidt, *op. cit. supra* note 32, at 8.

83. See MASS. GEN. LAWS ANN. ch. 202, § 10 (1958); MISS. CODE ANN. § 591 (1941); OHIO REV. CODE ANN. § 2127.12 (Supp. 1964).

84. Pa. Laws 1917, § 16(g) at 481, provided:

Whenever . . . it shall be lawful for the court to order the public sale of real estate, public notice of such sale shall be given by the person who is to make the sale, once a week for a period of three weeks before the day appointed therefor, by advertisement in at least one newspaper published in the county . . . and in all cases notice shall also be given by handbills, one of which shall be posted at a conspicuous place on the real estate proposed to be sold, and at least three of which shall be posted at three of the most public places in the vicinity of such estate.